



DEPARTMENT OF GENERAL SERVICES

Fact Sheet

U.S. Ninth Circuit Court of Appeals Strikes Down Participation Goals in State Contracting

Monterey Mechanical Company v. Wilson (3/9/98)

What happened?

On March 9, 1998, the Ninth Circuit Court upheld a three-judge panel's September 3, 1997, decision which reversed a lower court ruling involving a public works contract awarded by California State University (CSU). CSU disqualified the low bidder, Monterey Mechanical Co., because it had not complied with requirements of the California Public Contract Code (PCC) Section 10115. The appeals court ruled that this statute violates the 14th Amendment of the U.S. Constitution, which requires equal protection of the law.

How did PCC 10115 violate the U.S. Constitution?

The statute required general contractors to subcontract percentages of their work to minority and women-owned subcontractors, or show good faith efforts to do so. The required "goals" were not less than 15% for minority business enterprises and 5% for women business enterprises.

How is this ruling going to impact state contracting?

As of March 10, 1998, no state contracts may be awarded based on gender or ethnicity goals contained in PCC 10115. The court ruling does **not** impact provisions of state law establishing participation goals for disabled veteran business enterprises, nor does it impact locally or federally-funded contracts. Contracts awarded prior to the court mandate will not be affected. State agencies will be developing plans to make sure state contracting programs are carried-out without special preference or discrimination.

Governor Wilson's Executive Order, EO-172

Issued March 10, 1998, EO-172 states in part;

- "Every state agency, department, board, and commission shall cease any enforcement of the minority and women business enterprise participation goals..."
- "Every state agency, department, board, and commission shall take appropriate steps to ensure that state contracting programs are administered in a manner which is free from discrimination on the basis of race, sex, color, ethnicity, and national origin."
- "Every state agency, department, board, or commission shall consider, and if appropriate, submit to the Governor's Office, any recommendations which will promote equal opportunity in state contracting for all individuals and businesses without regard to their race, sex, color, ethnicity, or national origin."

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What percentage of state contracts went to women/minority subcontractors under PCC 10115?

During the last year that the state compiled such statistics (fiscal year 1994-95) 11.1% (\$310 million) of state contract dollars (\$2.8 billion) went to minority business enterprises, and 7.5% (\$210 million) went to women business enterprises.

What is the Department of General Services' role in implementing the new contracting guidelines?

A management memo containing the new guidelines for contracting has been distributed to all state contracting officials, and information has been published on the Department of General Services' (DGS) web site (www.dgs.ca.gov/). DGS is also taking steps to expand its outreach programs to encourage contracting opportunities for small business. All certified small businesses are still eligible for a 5% small business bidding preference..

Background on Monterey Mechanical case

Cal Polytechnic State University, San Luis Obispo solicited bids for a utilities upgrade to connect all campus buildings to a central heating and air conditioning plant and install a new power distribution system. Monterey Mechanical Company submitted a bid of \$22 million. They were not awarded the contract, even though their bid was the lowest, by some \$300,000. The contract was instead awarded to a company which met the women/minority business enterprise goals outlined in PCC Section 10115. The company protested the contract award, then sued the CSU's trustees on the grounds that the PCC statute that caused Monterey Mechanical Company to lose the job violates the 14th Amendment of the U.S. Constitution.

How does this decision relate to Proposition 209?

This decision was based on a separate set of legal issues than those raised by Proposition 209. To date, no appeals court has ruled on the application of Proposition 209 to the state contracting laws.